IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 16 OF 2007
WITH
APPEAL FROM ORDER NO. 17 OF 2007

Shri Shivanand Gurusangayya
Viraktamath and others. ... Appellants.

V/s.

Shri Bassapa Surgappa Umbarje
and another. ... Respondents.

S.S.Shah for the appellants.

S.G.Kudle for respondent No.1.

CORAM: A.M.KHANWILKAR, J.

DATED: 10th January 2007.

P.C.:

. Ordinarily, I would not have proceeded to hear these matters in view of earlier judicial order passed by me directing the office not to place the matters on my board in which Mr.Kudle is an Advocate on record.

2. When these matters were moved before me upon production, at that time I was informed that although Mr.Kudle had entered appearance in Writ Petition No.1684/2006, however, he has no instructions to appear in the present appeals on behalf of the same parties. In that view of the

matter, I entertained the appeals and directed the same to be placed for admission on board today.

3. Today, when these matters were called out, Mr.Kudle appeared for the contesting respondents as caveators. Mr.Kudle was informed that if he wants he can take these matters before any other bench. Mr.Kudle, however, submitted that these matters be heard by me and it will be his pleasure to argue before this Court. Mr.Kudle is put on notice that I shall recall my earlier judicial order of not hearing the matters in which he is an Advocate on record, provided he would abide by minimum courtesy to be offered to the Court at the time of hearing. That assurance has been given by Mr.Kudle. On that assurance I have proceeded with the hearing of this case.

4. Reverting to the merits of the case. After hearing both counsel, I have no hesitation in dismissing the appeals. The Court below has rightly taken a view that the decision of the Division Bench of this Court in Writ Petition No.1617/2006 dated 1st December 2006 had direct bearing on the question of granting any interim relief as prayed by the appellants/ applicants. In paragraph-3 of this

order, the Division Bench has made it clear that new Board of Trustees shall take appropriate decision of appointment and confirmation as well as in other matters pertaining to the Trust; and for which reason interim relief granted on the earlier occasion by the Division Bench came to be vacated. The effect of that order was, obviously, to facilitate the new Board of Trustees to take over day-to-day affairs of the Trust. If that is the purport of the observation made by the Division Bench in its order dated 1st December 2006, it was improper that the same was not brought to the notice of the lower Court. Suffice it to observe that no injunction could be granted against the new Board of Trustee who are expected to take over the affairs of the Trust and take necessary decision in the matters pertaining to the Trust.

. This, however, does not mean that the appellants are denuded from challenging the efficacy and validity of the scheme formulated by the Charity Commissioner in respect of the Trusts, by way of statutory remedy which is available to them. Those proceedings will have to be decided on its own merits in accordance with law. With this observation, the appeal is disposed of.

. It is reiterated that the proceedings pending before the lower Court will be decided uninfluenced by this order or any other observation made in the impugned order.

5. Needless to observe that all actions of the Board of Trustees will be subject to the outcome of the proceedings pending before the trial Court questioning the scheme formulated by the lower authorities.

. Appeal disposed of on the above terms.

(A.M.KHANWILKAR, J.)